

AMENDED IN ASSEMBLY MAY 14, 2003

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1528

Introduced by Assembly Member Cohn

February 21, 2003

An act to add Sections 1342.9 and 1357.19 to, and to add Division 100 (commencing with Section 100000) to, the Health and Safety Code, and to add Sections 12712.7 and 12714.5 to the Insurance Code, relating to health care, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1528, as amended, Cohn. Healthy California Act of 2003.

Existing law provides health care coverage programs to segments of the population who are otherwise unable to obtain health care coverage and who meet various eligibility requirements. These programs include the Healthy Families Program, administered by the Managed Risk Medical Insurance Board, and the Medi-Cal program, administered by the State Department of Health Services.

This bill would enact the Healthy California Act of 2003. The bill would create the California Essential Health Benefits Program that would be administered by the Managed Risk Medical Board to ensure access to health care coverage for all Californians. The bill would *state the intent of the Legislature* to require employers to pay an assessment for health care coverage purposes unless the employer provides its employees and dependents with the essential health benefits that are offered by the program. The bill would *state the intent of the*

Legislature to require the program to offer health care coverage to employees of employers who pay the program assessments for health care coverage. The bill would state the intent of the Legislature to require the Employment Development Department to collect these assessments. The bill would provide that these assessments would not be imposed unless authorized by a later enacted statute. Because these assessments would be a tax on employers, the bill would require a $\frac{2}{3}$ vote of each house of the Legislature for passage.

The bill would create the continuously appropriated Essential Health Benefits Fund that would be funded by assessments on employers and premiums from individuals who elect to purchase essential health benefits from the program. Because these assessments and premiums would be placed in a continuously appropriated fund, the bill would make an appropriation.

The bill would provide that the program is not subject to licensure or regulation by the Insurance Commissioner or the Director of the Department of Managed Health Care. The bill would require the Franchise Tax Board to distribute a form prepared by the Managed Risk Medical Insurance Board containing information about the program. The bill would make other related changes.

Vote: $\frac{2}{3}$ majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1342.9 is added to the Health and Safety
- 2 Code, to read:
- 3 1342.9. Notwithstanding any other provision of law, it is the
- 4 policy of this state that health care service plans shall operate in a
- 5 manner consistent with their participation in the California
- 6 Essential Health Benefits Program established under Division 100
- 7 (commencing with Section 100000). Any provisions of this
- 8 chapter that are inconsistent with participation by licensed health
- 9 care service plans in the California Essential Health Benefits
- 10 Program shall be waived by the department to the extent necessary
- 11 to authorize a health care service plan to participate in the program.
- 12 Notwithstanding any other provision of this chapter, a health care
- 13 service plan shall comply with the following:
- 14 (a) May offer coverage of health care benefits consisting only
- 15 of the essential health benefits and cost sharing pursuant to Section

1 100013 and any regulations and policies adopted by the Managed
2 Risk Medical Insurance Board to implement Section 100013.

3 (b) May not offer coverage of health care benefits with fewer
4 benefits or greater cost sharing than provided by Section 100013
5 and any regulations and policies adopted by the Managed Risk
6 Medical Insurance Board to implement Section 100013.

7 SEC. 2. Section 1357.19 is added to the Health and Safety
8 Code, to read:

9 1357.19. Notwithstanding any other provision of law, the
10 rating of small groups by any health care service plan, multiple
11 employer trust, or Taft-Hartley trust shall be consistent with the
12 requirements of the California Essential Health Benefits Program
13 established by Division 100 (commencing with Section 100000),
14 and any regulations and policies adopted by the Managed Risk
15 Medical Insurance Board to implement Division 100.

16 SEC. 3. Division 100 (commencing with Section 100000) is
17 added to the Health and Safety Code, to read:

18
19 DIVISION 100. THE CALIFORNIA ESSENTIAL HEALTH
20 BENEFITS PROGRAM
21

22 100000. (a) It is the intent of the Legislature to enact the
23 Healthy California Act of 2003 by creating the California
24 Essential Health Benefits Program in order to ensure access to
25 health care coverage for all Californians. The program shall
26 include all of the following:

27 (1) Requiring employers to participate in a program to pay for
28 health care coverage.

29 (2) Requiring individuals who are not covered by an employer
30 or a public program to secure and maintain health care coverage.

31 (3) Ensuring that all persons eligible for Medi-Cal, the Healthy
32 Families Program, or other governmental health care coverage or
33 assistance are enrolled in the specific program and receive the
34 services to which they are entitled.

35 (4) Establishing an essential benefit package that is available to
36 all Californians regardless of health status through health care
37 service plans and health insurers.

38 (5) Providing public support, in varying degrees, for all
39 persons who are unable to afford health care coverage, through tax
40 policies and subsidies.

1 (6) Reforming the current health insurance market.

2 (b) It is the goal of this division to achieve the maximum
3 feasible enrollment of Californians in health plans that offer, at a
4 minimum, an essential benefit package to all individuals.

5 100001. The California Essential Health Benefits Program is
6 hereby created in the Health and Human Services Agency.

7 100002. Unless the context requires otherwise, the following
8 definitions govern the construction and meaning of the terms used
9 in this division:

10 (a) “Board” means the Managed Risk Medical Insurance
11 Board established by Section 12710 of the Insurance Code.

12 (b) “Community rating” or “community rated” means rates
13 that do not vary by actual or expected claims experience or any
14 other factors other than age, geography, or benefits selected.

15 (c) “Dependent” means the spouse, minor child, permanently
16 disabled child, or legally dependent parent of a covered employee.

17 (d) “Employee” means a person as defined in Article 1.5
18 (commencing with Section 621) of Chapter 3 of Part 1 of Division
19 1 of the Unemployment Insurance Code.

20 (e) “Employer” means an employer, as defined in Article 3
21 (commencing with Section 675) of Chapter 3 of Part 1 of Division
22 1 of the Unemployment Insurance Code, employing for wages or
23 salary ____ or more persons to work in this state.

24 (f) “Employment” is defined in Article 1 (commencing with
25 Section 601) of Chapter 3 of Part 1 of Division 1 of the
26 Unemployment Insurance Code.

27 (g) “Essential benefit plan” means a health plan including only
28 the essential health benefits contained in Section 100013.

29 (h) “Essential health benefits” means the minimum mandatory
30 covered services and cost sharing limits required by Section
31 100013.

32 (i) “Fund” means the Essential Health Benefits Fund created
33 in Section 100004, including the money deposited therein.

34 (j) “Health plan” means a health or disability insurer regulated
35 by the Department of Insurance pursuant to Chapter 1
36 (commencing with Section 10110) of Part 2 of Division 2 of the
37 Insurance Code, a health care service plan regulated by the
38 Department of Managed Health Care by the Knox-Keene Health
39 Care Service Plan Act of 1975 pursuant to Chapter 2.2
40 (commencing with Section 1340) of Division 2, a self-funded

1 employer-sponsored plan, a multiple employer trust, or a
2 Taft-Hartley Trust as defined by federal law, authorized to pay for
3 health care services in this state.

4 (k) “High option benefit plan” means a plan of health benefit
5 coverage with benefits in excess of the essential health benefits
6 specified in Section 100013.

7 (l) “Medically necessary” means an intervention that, as
8 recommended by the treating physician and determined by a health
9 plan’s medical director or physician designee, is all of the
10 following:

11 (1) A health intervention for the purpose of treating a medical
12 condition.

13 (2) The most appropriate supply or level of service,
14 considering potential benefits and harms to the patient.

15 (3) Known to be effective in improving health outcomes. For
16 new interventions, effectiveness is determined by scientific
17 evidence. For existing interventions, effectiveness is determined
18 first by scientific evidence, then by professional standards, then by
19 expert opinion. All intervention shall be cost effective for the
20 patient’s condition compared to alternative interventions,
21 including no intervention. Cost effective does not necessarily
22 mean lowest price.

23 (m) “Principal employer” means the employer for whom an
24 employee works the largest number of hours in any month.

25 (n) “Program” means the California Essential Health Benefits
26 Program created in Section 100001.

27 (o) “Purchasing Pool” has the same meaning as “program.”

28 (p) “Wages” means all remuneration for services from
29 whatever source, including salaries, commissions, bonuses, and
30 tips and gratuities, paid directly to an individual by a customer or
31 his or her employer.

32 100004. The Essential Health Benefits Fund is hereby created
33 in the State Treasury. All funds collected for any of the following
34 purposes shall be deposited in the fund:

35 (a) Assessments paid to the board from employers who elect to
36 pay an assessment pursuant to Section 100007.

37 (b) Payments for premiums from individuals to purchase
38 essential health benefits pursuant to Section 100009.

39 (c) Any funds appropriated to the fund by the Legislature.

1 100005. The California Essential Health Benefits Program
2 shall be administered by the Managed Risk Medical Insurance
3 Board. The board has the authority to do all of the following in
4 administering the program:

5 (a) Determine the eligibility of applicants.

6 (b) Develop and propose a budget for the program.

7 (c) Administer programs of essential health benefits coverage
8 as provided by this division.

9 (d) Contract with any public or private entity to administer or
10 carry out a program providing essential health benefits, or any
11 portion thereof, provided by this division.

12 (e) Adopt rules and regulations to carry out the purposes of this
13 division.

14 (f) Authorize expenditures from the fund or from other moneys
15 appropriated to it in the annual Budget Act or any other act to carry
16 out the purposes of this division.

17 (g) Exercise all powers reasonably necessary to carry out the
18 powers and responsibilities granted or imposed under this
19 division.

20 (h) Collect all fees, charges, and premiums authorized by this
21 division for deposit into the fund.

22 100006. All moneys in the Essential Health Benefits Fund are
23 continuously appropriated, without regard to fiscal years, to the
24 board to carry out the purposes of this division. Not more than
25 ____ percent of the amounts deposited in the fund during the most
26 recently completed state fiscal year shall be available for
27 administration of the program during the current state fiscal year
28 unless appropriated by the Legislature for this purpose.

29 100007. (a) ~~An~~ *It is the intent of the Legislature that an*
30 employer with up to 200 employees shall pay an assessment of
31 ____ percent of its total payroll cost for all full-time and part-time
32 employees into the fund. An employer with more than 200
33 employees shall pay an assessment of ____ percent of its total
34 payroll cost for all full-time and part-time employees into the fund.
35 An employer shall not be required to pay this assessment if it
36 provides a plan covering essential health benefits to each of its
37 full-time employees, to each of its part-time employees on a
38 prorated basis, and to any dependent of an employee who is not
39 receiving essential health benefits from a different employer. An
40 employer is not subject to the assessment provided by this

subdivision for failure to provide essential health benefits to a dependent of an employee who is receiving essential health benefits from another employer.

(b) ~~The~~ *It is the intent of the Legislature that the board shall contract with the Employment Development Department to collect the assessment established by this section.*

(c) It is the intent of the Legislature that the assessment be set at a level that together with employee contributions and subsidies is sufficient to support a program of coverage equivalent to the essential benefit plan.

(d) *Notwithstanding any other provision of this division, no tax, fee, or assessment provided by any provision of this division shall become effective or be imposed upon any person pursuant to any provision of this division until a later enacted statute specifically authorizes that tax, fee, or assessment.*

100008. An employer electing to provide essential health benefits pursuant to this division may do any of the following:

(a) Select and purchase that coverage from any health plan.

(b) Provide coverage through self-funded, employer-sponsored plans if the employer is not community rated and otherwise meets the requirements of this division.

100009. (a) The board shall offer coverage under the program to all employees of employers electing to pay an assessment under Section 100007, and to all self-employed and unemployed persons and their dependents who elect to obtain coverage from the program. In addition to a benefit plan covering only the essential health benefits required under Section 100013, the board shall offer one or more plans covering additional benefits to each person seeking coverage under the program.

(b) The board shall contract with all health or disability insurers licensed by the Department of Insurance and all health care service plans licensed by the Department of Managed Health Care in geographic areas where it provides coverage of essential health benefits.

100010. The board shall arrange for coverage of essential health benefits through the purchasing pool for the employees and their dependents of those employers who pay the assessment established by the board under Section 100007, and for the coverage of other eligible beneficiaries who obtain coverage from the program pursuant to Section 100009. The board shall obtain

1 coverage through the purchase of coverage from health care
2 service plans and health and disability insurers. However, the
3 board may obtain coverage by directly contracting with providers
4 on either a prepaid or negotiated fee basis, or a combination of both
5 methods where coverage by a health care service plan or insurer
6 is not available in a geographic area. In contracting directly, the
7 board shall include safety net providers. In arranging coverage, by
8 any means, the board is not subject to the requirements of the
9 Knox-Keene Health Care Service Plan Act of 1975 relating to the
10 licensure of health care service plans, nor to the requirements of
11 any provision of the Insurance Code requiring an insurance
12 certificate. The activities of the board are not subject to licensure
13 or regulation by the Department of Insurance, the Department of
14 Managed Health Care, or any other agency of state government in
15 any manner whatsoever.

16 100011. (a) An employer shall be responsible for 75 percent
17 of the premium for essential health benefits for each employee,
18 subject to cost sharing as permitted by subdivision (c) of Section
19 100013 and proration of hours worked by the employee. An
20 employer shall be responsible for 50 percent of the premium for
21 essential health benefits for employee dependents, subject to cost
22 sharing as permitted by subdivision (c) of Section 100013 and
23 proration of hours worked by the employee.

24 (b) An employer providing coverage exceeding the minimum
25 benefits required by this division may charge an additional share
26 of the premium for additional coverage except that the share of the
27 premium may not exceed the cost of the additional coverage to the
28 employer.

29 (c) An employee or dependent is responsible for the cost
30 sharing for the minimum coverage benefits required by this
31 division to the extent set forth in Section 100013.

32 (d) All existing tax benefits provided to employers for
33 providing health care coverage to their employees shall be
34 maintained.

35 100012. An employer that provides essential health benefits
36 pursuant to Section 100013 shall provide these benefits to every
37 employee who has qualifying wages under the Unemployment
38 Insurance Code. An employer shall continue payments for these
39 benefits or continue to pay the assessment under Section 100007
40 for an employee who is hospitalized or otherwise prevented by



1 sickness or injury from working and earning wages, and for whom
2 sick leave benefits are exhausted. This obligation shall continue
3 for three months following the month during which the employee
4 became hospitalized or disabled from working, or the month the
5 employee becomes eligible for other public or private coverage,
6 whichever occurs first. An employer is not required to provide
7 essential health benefits pursuant to this division with respect to an
8 employee if any of the following occur:

9 (a) The employer is not the principal employer of the employee
10 in terms of monthly hours worked.

11 (b) The employee has other health care coverage under any law
12 of the United States or this state.

13 (c) The employee is covered as a dependent under a health care
14 service plan, disability insurance policy, or self-funded
15 employer-sponsored plan that has health care coverage benefits
16 meeting the requirements of this division.

17 100013. (a) Essential health benefits shall consist of
18 medically necessary, evidence based services periodically updated
19 by the board within the following benefit categories:

20 (1) Preventive services.

21 (2) Physicians services.

22 (3) Outpatient hospital services.

23 (4) Inpatient hospital services.

24 (5) Pharmaceuticals.

25 (6) Diagnostic laboratory and diagnostic and therapeutic
26 radiologic services.

27 (7) Emergency health care services.

28 (8) Home health services.

29 (9) Hospice services.

30 (b) The board shall create an advisory group to recommend
31 additions and deletions to the essential health benefits package.
32 The advisory group shall include experts in each of the following
33 areas:

34 (1) Clinical practice.

35 (2) Evidence-based outcomes research, including technology
36 assessment.

37 (3) Clinical cost-benefit and cost effective analysis, including
38 pharmerconomics.

1 The advisory group may not review the interpretation or
2 application of these benefits in individual patient cases and may
3 not replace independent medical review.

4 (c) Maximum annual individual and family out of pocket
5 spending caps shall be set at ____ and ____, respectively. These
6 caps may be increased from time to time by the board to reflect
7 increases in health care costs.

8 (d) It is the intent of the Legislature that cost sharing with
9 respect to the essential health benefits package shall encourage
10 appropriate use of health services but not create a significant
11 barrier to health care.

12 (e) The board shall establish rules on guaranteed issue, rating,
13 and risk adjustment for participating health plans. These rules shall
14 be consistent with rules for items applicable to health plans
15 operating outside the purchasing pool.

16 (f) The standards and rules set forth above shall also apply to
17 employers who select the option to provide health care coverage
18 outside the purchasing pool.

19 100014. An employer providing health care coverage
20 pursuant to this division may not be required to pay for health care
21 benefits in any of the following circumstances:

22 (a) When the beneficiary is entitled to receive disability
23 benefits or compensation under any workers' compensation or
24 employers' liability law that covers the health care services needed
25 to treat the injury or illness.

26 (b) When health care services for an injury or illness are
27 provided to the beneficiary by any federal, state, local, or other
28 agency without charge.

29 (c) When health care services are covered under a public health
30 benefit program including, but not limited to, the Medicare
31 program, the Medi-Cal program, the Healthy Families Program,
32 the Managed Risk Medical Insurance Program, or the Access for
33 Infants and Mothers Program.

34 100015. An employer may not request or otherwise seek to
35 obtain information concerning income or other eligibility
36 requirements for public health benefit programs regarding an
37 employee, dependent, or other family member of an employee,
38 other than that information about the employee's employment
39 status otherwise known to the employer consistent with existing
40 state and federal law and regulation. For these purposes, public

1 health benefit programs include, but are not limited to, the
2 Medi-Cal program, Healthy Families Program, Managed Risk
3 Medical Insurance Program, and Access for Infants and Mothers
4 program.

5 100016. The Employment Development Department shall
6 adopt regulations to ensure that employers comply with the
7 provisions of this division.

8 100017. (a) Every health care service plan and health and
9 disability insurer offering coverage of health care benefits to one
10 or more employers or individuals shall do the following:

11 (1) Offer a plan of coverage consisting of the essential health
12 benefits specified in Section 100013 on a guaranteed issue basis,
13 consistent with rating and participation rules established by the
14 board to any employee within its service areas.

15 (2) Offer a plan of coverage consisting of the essential health
16 benefits specified in Section 100013 on a guaranteed issue basis,
17 consistent with rating and participation rules established by the
18 board to any self-employed or unemployed individual residing
19 within its service areas.

20 (b) A health care service plan or health and disability insurer
21 may not offer a plan of coverage with fewer benefits or higher cost
22 sharing than the essential health benefits required by Section
23 100013.

24 100018. (a) A health care service plan or health or disability
25 insurer providing coverage of essential health benefits to
26 employers or individuals shall comply with the following
27 requirements:

28 (1) Employer groups with up to 200 employees shall be
29 charged a community rate for the portion of any policy covering
30 the essential health benefits specified by Section 100013, with
31 standardized adjustments for age and geographical area approved
32 by the board. Rates shall be equivalent for all individuals in the
33 same group.

34 (2) Employer groups with more than 200 employees may be
35 charged a community rate or may be charged on an experience
36 rated basis or other actuarially appropriate basis.

37 (b) All individuals who do not receive coverage through an
38 employer group and who purchase coverage from a health care
39 service plan or health or disability insurer under this division shall
40 be rated on a community rating basis, with standardized

1 adjustments for age and geographic areas approved by the board,
2 for the portion of any policy covering the essential health benefits
3 specified by Section 100013. The board shall set rate bands which
4 establish the ratios between the oldest and youngest age rating
5 categories. This provision shall not apply to individuals covered
6 under a federal Medicare program or Medicare supplemental plan.

7 100019. (a) The board shall establish a risk allocation
8 program in which each health care service plan or health or
9 disability insurer providing coverage purchased by the pool shall
10 participate. The risk allocation program shall adjust payments to
11 participating health plans for providing those essential health
12 benefits required pursuant to Section 100013. Risk adjustments
13 may be made only on the basis of factors approved by the board.
14 The board may conduct studies on the equitable spreading of the
15 risks of health care costs across the population receiving health
16 coverage under the pool in establishing and updating its risk
17 allocation program.

18 (b) The board shall establish an outlier pool that would
19 compensate participating health care service plans and health and
20 disability insurer for extraordinary losses resulting from the
21 coverage of essential health benefits required pursuant to Section
22 100013. The board shall establish criteria for defining cases
23 eligible for outlier payments and the amount of the payments. All
24 health care service plans and health and disability insurer
25 providing essential health benefits required under Section 100013
26 may elect to participate in the risk outlier program. Participation
27 in the outlier pool shall be voluntary. The pool shall be self-funded.
28 The board shall establish the amount of contributions to the pool
29 from all participants.

30 100020. (a) The board shall establish a program to subsidize
31 or reduce on a sliding scale premiums paid by employers and
32 individuals and cost sharing paid by individuals based upon the
33 ability to pay and the appropriateness of payment under the
34 circumstances.

35 (b) The board shall establish a program to subsidize or reduce
36 on a sliding scale the assessment upon employers for purchasing
37 coverage under the pool based upon the employer's ability to pay
38 the assessment and appropriateness of payment under the
39 circumstances.

100021. (a) Every individual who is either 18 years of age or older or an emancipated minor residing in California who is not enrolled in a public benefit program described in Section 100015 shall have and demonstrate evidence of coverage for himself or herself and his or her dependents of at least the essential health benefits specified in Section 100013.

(b) The Franchise Tax Board shall distribute to every person to whom it distributes information regarding personal income tax liability, including, without limitation, every person who filed a personal income tax return in the most recent calendar year, a form prepared by the board that informs the recipient of the requirement to establish and maintain coverage of essential health benefits.

(c) Failure to maintain coverage of essential health benefits as required by this division is punishable by a civil fine not exceeding _____.

100022. The provisions of the program are not severable. If any provision of this program, or its application, is held invalid, then all provisions of the program are invalid.

SEC. 4. Section 12712.7 is added to the Insurance Code, to read:

12712.7. Notwithstanding any other provision of law, it is the policy of this state that disability or health insurers shall operate in a manner consistent with their participation in the California Essential Health Benefits Program established under Division 100 (commencing with Section 100000) of the Health and Safety Code. Any provisions of this code that are inconsistent with participation by licensed disability or health insurers in the California Essential Health Benefits Program shall be waived by the commissioner to the extent necessary to authorize a disability or health insurer to participate in the program. Notwithstanding any other provision of law, a disability or health insurer shall do the following:

(a) May offer coverage of health care benefits consisting only of the essential health benefits and cost sharing pursuant to Section 100013 of the Health and Safety Code, and any regulations and policies adopted by the Managed Risk Medical Insurance Board to implement Section 100013.

(b) May not offer coverage of health care benefits with fewer benefits or greater cost sharing than provided by Section 100013 of the Health and Safety Code, and any regulations and policies

1 adopted by the Managed Risk Medical Insurance Board to
2 implement Section 100013.

3 SEC. 5. Section 12714.5 is added to the Insurance Code, to
4 read:

5 12714.5. Notwithstanding any other provision of law, the
6 rating of small groups by any health or disability insurer, multiple
7 employer trust, or Taft-Hartley trust shall be consistent with the
8 requirements of the California Essential Health Benefits Program
9 established by Division 100 (commencing with Section 100000)
10 of the Health and Safety Code and any regulations and policies
11 adopted by the Managed Risk Medical Insurance Board to
12 implement Division 100.

